RECENT LEGAL LITERATURE

CENTRALIZATION AND THE LAW. By Melville M. Bigelow, Brooks Adams, Edward A. Harriman, and Henry S. Haines. Boston: Little, Brown & Company, 1906. pp. xvii, 296.

This book is a distinct contribution to jurisprudence. It deals with fundamental principles in a broad and comprehensive way that challenges and holds the attention. A purpose is apparent upon every page, namely, to arouse the profession and the public to a realization of the facts that the law should be a vital thing in all of its relations, that it springs naturally and logically from the dominant forces in society, and, therefore, should always conform to present conditions, and that it must necessarily fail in accomplishing just results whenever it arbitrarily imposes upon the present, principles that sprang from an older environment and that have nothing in common with modern purposes and modern methods. In brief, the purpose of the book is to show that the necessities of the present should make the law and that its administration should be influenced by the dead past only so far as the principles of the past naturally survive in present conditions.

The book is a collection of several lectures delivered by the gentlemen named above before the Law School of Boston University. As published, these lectures are preceded by an introductory chapter by Dr. Bigelow upon *The Extension of Legal Education,* wherein he develops the idea that as the law should be a present, living thing, springing from the social and economic conditions of the day, it should be studied, not as a body of fixed and unchangeable principles and rules imposed by sovereign authority, but as a resultant of the dominant forces of the times in all departments of life, and studied with all the light that can be obtained from present conditions in the social, political and business world. "The law," says the author, "should be taught as a practical living thing of the living present, flexible and responsive to social and economic changes in life. The law schools should aim to fit their students to help provide for and administer in the most skilful way, whether in the courts or the legislature, through the press or otherwise, whatever in the affairs of our day pertains to the law."

The first and second lectures, by Mr. Adams, are respectively upon the *Nature of Law,* together with a discussion of the *Methods and Aim of Legal Education* and *Law Under Inequality; Monopoly,* wherein the author deals effectively with social and economic history, and finds the law of today emerging from the conflicts of present or recent social and economic forces. His general attitude toward the questions and the nature of his conclusions are indicated in the following quotations: "Unless I profoundly err, there are, as I have endeavored to explain, no abstract legal principles, any more than there is an abstract animal apart from individual animals, or an abstract plant apart from individual plants. The law is the envelop with which any society surrounds itself for its own protection. The rules of the law are established by the self-interest of the dominant class, so far as it can impose its will upon those who are weaker. These rules form a corpus which

is more or less flexible according to circumstances, and which yields more or less readily to pressure." And again, "Law is not the command of a sovereign, assuming the sovereign to be a power apart from the subject community. Law is a resultant of social forces, and the sovereign is the vent through which this resultant expresses itself. Various forces being always in conflict, they become fused in the effort to obtain expression, and this fusion creates a corpus juris, the corpus inclining in the direction of the predominant force in the precise degree in which it predominates." Throughout these lectures, as indeed throughout the entire book, the notion is brought prominently to the fore, that the traditional legal education in principles and rules should be supplemented by a careful study of the great social and economic forces of the times, "those new forces which are making trusts, which are building up trade unions, which are consolidating our municipalities, and which are lending intensity to the growing energy of the Federal Jurisdiction."

In the third lecture, which is by Dr. Bigelow, the author evolves what he suggests as a working definition of the term law, as viewed in the light of the law being "the resultant of actual, conflicting forces in society," and in doing this he finds it necessary to clear the way by showing that the current definition given by Blackstone that "law is a rule of civil conduct prescribed by the supreme power in a state, commanding what is right and forbidding what is wrong" is not only unsatisfactory but, under modern conditions particularly, is essentially unsound and misleading. "The chief objection," says the author, "is that the definition as a whole naturally suggests, and in connection with Blackstone's context and the practice of the time clearly teaches that the sovereign of a people may be external, and by implication that the law begins with, and is founded upon, abstract principles. Its language indeed suggests a theocratic original; the definition, especially in connection with the discussion accompanying it, reads like an attempt to generalize the decalogue, with the substitution of the words 'prescribed by the supreme power of the state' for 'And God spake all these words'; the analogy being plain that the supreme power in a state is external to the people, as God is external to his people, and so declares the law forever." After showing with particularity that in his judgment the definition is also unsound and misleading in its details, the author suggests the following as a general definition: "Municipal law signifies the existence of binding relations, direct and collateral, of right and duty between men or between the state and men; or legislative grant of authority under which such relations may be created; each in virtue of freedom to do whatever is reasonable. * * * Remedial law signifies the existence of relations of right and duty between the state and the members of the same, in consequence of a breach of duty, binding the state to enforce compensation in civil, and punishment, subject to pardon, in criminal cases. Procedure, it may be added, signifies the means provided by the state for enforcing the law, original and remedial." It should be said that these conclusions are preceded by a thoughtful and scholarly consideration of what, in the judgment of the author, are the essential elements of a comprehensive definition of law, namely, the binding relations, direct and col-

lateral, of right and duty that exist between persons or between the state and persons and that arise by virtue of freedom to do what is reasonable.

Having arrived in the third lecture at what he suggests as a working definition of law, Dr. Bigelow in the fourth, treats of the Scientific Method in Law. This, he contends, is not to be found in the so-called analytical school or, in any considerable degree, in the historical school. The former planted itself "on its own conception of an inherent nature of rights and law. On that footing Bentham could serve up codes and constitutions according to taste." But the method, as applied to law, could not be regarded as scientific. The historical school, according to the author, "standing for the idea that the law is all found in the books, teaches the doctrine of abstract principles. All the law being found in books, the law there found governs; there is no place for conditions essentially different from those of past times." This the author regards as fatal. And while recognizing that historical sources, so far as they throw light upon the law as actually administered in the courts at any particular time are valuable, and that their study to that extent must be a necessary part of a sound legal education, he contends that legal history as such is for the historian; "that the historical school in professing to teach existing law through history, confuses history with (what certainly should be taught) the sources of law in the proper sense of the word." After preliminary reference to the different schools of jurisprudence, Dr. Bigelow proceeds to explain what he regards as the scientific method in law, the central and controlling ideas of his exposition being that law is the product of the times, the resultant of conflicting forces of the present, and that that method only can properly be regarded as scientific either in the study or the administration of the law that recognizes present conditions as the fundamental and controlling element; that the scientific method in law means not only a recognition of the law of today as a present product, but the further recognition that in its administration everything from the past that is unsuited to the conditions of the hour, should be at once and without hesitation abandoned. The lecturer shows by numerous striking illustrations that much in the law of today that is the subject of intelligent and legitimate criticism, is a survival of the past that is unsuited to the conditions of the present, a survival that in some cases has been due to accident, in others to the technicalities of pleading and procedure and in others still to illogical reasoning by the courts. "Procedure," says the author, "has been a prison-house for the law. Many a crippled rule of substantive law traces its appearance back sooner or later to some phase of procedure—to set forms of action, jurisdiction, 'niceties' of pleading. * * * Enough to allude to the fact that the common law, standing in the early and middle period of English history for all the ordinary internal affairs of men, was for centuries imprisoned within the narrow walls of some half-dozen forms of action." And again, "The artificial modes of thinking handed down for centuries could not but affect the legal profession, even after the change which swept away the substance of false ideas. Mediæval ideas, mediæval modes of reasoning have not yet entirely let up their grip." In brief, the scientific method in law, according to the author, stands for a complete adaptation of the law of the necessities of the present.

The dominant idea of this lecture may be gathered from the following quotation: "The law should be an ever-living fact, a fact of the life of the present day. It should be for us who now live; tomorrow it will perchance, under change of conditions, be another thing—it will be for our successors. The law should be suited to him who needs its protection, whenever he may live, in accordance with times and the pursuits of men. When this ideal is reached, the year 1800 will be no more to the people, so far as the law is concerned, than the year 1700 or 1600 or 1300. All of that, so far as it fails to shed light upon our own path, will be turned over to the historian, or used for another purpose than teaching our law. The historian of the law of yesterday will have his place, as has the historian of other things; he will have his place on the bench, for the bench will always need men of broad mind and learning; but in proportion as the ideal is reached, the judges should find less and less need of seeking authority in the Year Books or in Coke, or in the worthies of much later times for their decisions. The life of another and different age will not bind our successors in the day of the full consummation. If we govern ourselves today by laws laid down yesterday, it is or should be because those laws are suited to us; they are our own laws, not a priori laws made for us by another set of men. Are we, then, in accordance with such a school of ideas, to overrule the past, with all its accumulations? Clearly not; we have only to leave it alone where it fails to serve us. The past served its purpose in its day; why should it have a posthumous life to trouble men living under other conditions? After the period of the reasonable life of a decision, let the decision, as a binding authority, die. * * * The laws peculiar to our own day will go, because they ought to go, the same way; the only difference, when the new order of things comes fully into operation, being that their day in ordinary cases will be shortened. Let them live a reasonable time, that is, so long as they serve the social order—then let them die. It will be no cause for fear to see 'authority' of the kind relaxing its hold upon the administration of justice."

It should be added that in this as in the preceding lectures the importance of making the scientific method in law, as therein explained, the fundamental idea in legal education is constantly emphasized. And it is suggested that the schools should teach: "first, the law as we have it, that is to say as it is actually administered in our courts of justice; secondly, the nature of the defects discovered in the connection between the law as it is and the theory of rights, together with the duty of earnest, persistent endeavor to bring about a full conformity of the law to the actual affairs of life; and thirdly * * * subjects related to the law, including the sources of the same, with a view of broadening the student's intelligence."

The fifth lecture upon *Law as an Applied Science* emphasizes the importance to the practicing lawyer of a knowledge, in addition to principles which he gets from the books, of the facts and conditions of the life that is the field of his activity; while the sixth upon *Rate-Making* is introduced as an object-lesson in the extension of legal education for which the book as a whole stands. For this extension involves study by the law student in such related fields as those of business, economics and history. Much could be said in favor of this proposed extension. It would necessarily mean a

material lengthening of the law course and possibly a shortening of the undergraduate college course for law students, a change that in the opinion of many would not be undesirable. That the study of such related subjects as transportation, interstate commerce, insurance, banking, municipal government, international law and consular affairs in connection with the technical study of the law, would serve greatly to broaden the field of the student goes without saying. And to study such subjects as a part of a law course would undoubtedly give better results than would come from their study in a preparatory course, as their related value and importance would more clearly appear.

While the leading notion of this book that law should be a present, living thing, adapted to present conditions and necessities, commends itself at once to the thinking reader, the associated notion that the entire doctrine of the existence of certain abstract legal principles must go, will not probably meet with general approval. Undoubtedly very much, perhaps most, of the law springs as a resultant from present conditions, but it might prove to be a correct conclusion also to say that much of it rests in abstract principles of right and justice that are applied, as occasion demands, to the solution of present problems. H. B. HUTCHINS.

CONSTITUTIONAL LAW OF ENGLAND. By Edward Wavell Ridges, of Lincoln's Inn, Barrister-at-law. London: Stevens & Sons, Limited, 1905, pp. xxxii, 459.

This book presents a comprehensive view of the government of the United Kingdom and her colonies. It is not a treatise upon the constitutional law of England, in the sense that Story's and Cooley's great works are treatises on the constitutional law of our country, but rather a treatise on English political institutions, with a brief account of their history and development. It is a book for the general reader who desires to be informed as to the governmental machinery of the English people and its practical operation, as well as for one with technical learning in the law.

The book is divided into six parts. Part I deals with the "Nature and Sources of English Constitutional Law." Part II, with the "Legislature and the Public Revenue," with chapters on "The Meeting and Termination of Parliament," "The House of Commons," "The House of Lords," "Public. Private and Money Bills," and "The Public Revenue." Part III is occupied with a discussion of "The Executive," and includes chapters on "The Crown," "The Privy and Cabinet Councils" and "The Members of the Executive." Part IV deals with "The Judiciary," treating of English judicial institutions in the period preceding and including the reign of Edward I; that following the reign of Edward I. to the Judicature acts of 1873-1902, and that under the Judicature acts. Part V discusses "The Church, the Navy and the Army," and Part VI, the countries subject to the laws of England, with separate chapters on "The United Kingdom," "The Colonies," "The Indian Empire," and on "Protectorates and Miscellaneous Possessions."

The chapters on the Judiciary will furnish as much of interest to lawyers